United Nations TD/RBP/CONF.8/8

United Nations Conference on Trade and Development

Distr.: General
12 May 2015

Original: English

Seventh United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices
Geneva, 6–10 July 2015
Item 6 (b) of the provisional agenda
Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices

Voluntary Peer Review of Competition Law and Policy:

Albania

Overview*

* This document is an overview of the voluntary peer review of competition law and policy in Albania (UNCTAD/DITC/CLP/2015/1).

GE.15-09460 (E)
1509460

Please recycle

Note

Voluntary peer reviews of competition law and policies carried out by UNCTAD fall within the framework of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices (the United Nations Set of Principles and Rules on Competition), adopted by the General Assembly in 1980. Among other things, the Set seeks to assist developing countries in adopting and enforcing effective competition law and policy suited to their development needs and economic situation.

The designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the United Nations Secretariat concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic systems or degree of development.

Acknowledgements

UNCTAD Voluntary Peer Reviews of Competition Law and Policies are conducted at annual meetings of the Intergovernmental Group of Experts on Competition Law and Policy or at five-yearly United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The substantive preparation is carried out by the Competition and Consumer Policies Branch of UNCTAD.

This report was prepared for UNCTAD by Kiril Pangelov, Director of Legal Analyses and Competition Policy Directorate of the Bulgarian Competition Authority. The substantive backstopping and review of the report was the responsibility of Graham Mott and Hassan Qaqaya, former Head of the Consumer Policies Branch.

UNCTAD would like to acknowledge the enriching assistance of Albanian Competition Authority officials, particularly Lindita Milo (Lati), Servete Gruda, Koco Broka, Diana Dervishi, Ermal Nazifi, Pajtim Melani, Daniela Mehmeti and all other officers who contributed to this report, as well as all the persons and representatives of the public and private sector institutions who were interviewed.

I. Historical, political and economic context

1.1 Historical and political development

1. Following the Second World War, the Albanian resistance movement, headed by the Communist Party, took control of the country. After 46 years, the regime fell and in 1992 the first democratic parliamentary elections were won by the Democratic Party of Albania. In November 1998, the new Albanian Constitution was approved by national referendum and led to the establishment of a democratic system of State government, in the form of a unitary parliamentary republic, based on the rule of law and the protection of fundamental human rights.

2. Gradually, Albania has overcome its previous international isolation and is now a member of some of the most prestigious global and regional organizations and institutions such as the United Nations (1955), the Organization for Security and Cooperation in Europe (1991), the European Bank for Reconstruction and Development (1991), the International Monetary Fund (1991), the World Bank (1991), the Organization of Islamic Cooperation (1992), the Council of Europe (1995), the World Trade Organization (2000), the Central European Free Trade Agreement (2007) and the North Atlantic Treaty Organization (2009). Albania is a potential candidate for membership of the European Union.

1.2 Economic development

3. During the 46-year Communist regime, Albania had a strictly centralized economy controlled by the Government with no market mechanisms.[1] At the end the regime, Albania was ranked among the poorest countries in Europe in terms of gross domestic product (GDP) per capita, at $1.825 (1992).[2] Extreme poverty and the informal economy were widespread in Albanian society, although not officially recognized until 1991.[3] The economic and social conditions during the 1900s led to significant waves of emigrants, especially to neighbouring Italy and Greece.

4. In the mid-1990s, a long and difficult period of transition from a command economy to a market economy, began.[4] As a result of structural reforms in the mid-1990s, Albania has made impressive economic progress, achieving macroeconomic stability and one of the fastest rates of annual GDP growth in Europe: 9.4 per cent (1994), 8.9 per cent (1995) and 9.1 per cent (1996).[5] After the drastic decline in annual GDP in 1997 (minus 10.2 per cent) as a result of the Albanian Rebellion of 1997, the country again joined the ranks of

---

[1] M Muço, 1997, *Economic Transition in Albania: Political Constraints and Mentality Barriers*, NATO Individual Fellowship Programme 1995–1197, June.

[2] International Monetary Fund, 2006, *World Economic Outlook Database*, April.

[3] United Nations, 2010, *Albania National Report on Progress Toward Achieving the Millennium Development Goals*.

[4] S Gruda and L Milo (Lati), 2010, SMEs development and competition policy in Albania, Portal on Central Eastern and Balkan Europe [PECOB's] Papers Series, School of Economics, Tirana University.

[5] European Bank for Reconstruction and Development, 1999, *Transition Report 1999: Ten Years of Transition – Economic Transition in Central and Eastern Europe, the Baltic States and the CIS*, London.

European countries with positive economic development in terms of GDP growth: 12.7 per cent (1998), 10.1 per cent (1999) and 7.3 per cent (2000).[6]

5. Albania is now a middle-income transition economy that has maintained positive growth trends and financial stability as one of the fastest-growing European economies. The average annual real growth rate of 6 per cent in the first decade of the twenty-first century has reduced poverty by half and doubled the country's exports.[7] The private sector, consisting mainly of small and medium-sized enterprises (SMEs), is the major engine of Albania's economic growth, providing 75 per cent of GDP and 83 per cent of employment.

6. There are still some key challenges to continued economic development, particularly with low industrial productivity and an informal economy that is estimated to account for between 24 per cent (World Bank) and 58 per cent (Government of Albania) of GDP.[8] In terms of the quality of its business environment, Albania has registered certain improvements but still ranks below most other European countries.[9]

7. In recent years, Albania's economic growth has slowed, reflecting the existing difficulties faced by its major trading partners, Italy, Greece and Spain.[10] Although the country has not suffered severe effects from the recent global financial crises, the Albanian Government had to enact budgetary restraints by reducing fiscal revenue plans, cutting expenditure and increasing budget deficits to around 6.1 per cent of GDP in 2013.[11]

1.3 Accession to the European Union

8. Albania's European integration is seen as one of the most significant ambitions of the Albanian nation in the post-Communist years, as most Albanians support the country's accession to the European Union.[12]

9. Albania has been recognized as a potential candidate for membership of the European Union since June 2003. In June 2006, the country signed the Stabilization and Association Agreement. Shortly after its entry into force on 1 April 2009, Albania applied for membership of the European Union.[13] The key element of the integration process is the harmonization of Albanian legislation with European law. Some of the most important chapters of the Agreement concern economic and commercial provisions, including competition law clauses.

II. Development of Albanian competition policy

10. The historical development of Albanian competition policy reflects the political and economic changes in the country during the years after the fall of Communism and has

---

[6] International Monetary Fund, 2006, *World Economic Outlook Database*, April.

[7] World Bank Group, 2013, *Albania -Partnership Programme Snapshot*.

[8] S Gruda and L Milo (Lati), 2010.

[9] World Bank, 2013, *2014 Doing Business report – Albania*.

[10] European Bank for Reconstruction and Development, 2013, *Transition Report 2013, Country Assessments – Albania*.

[11] Law No. 119/2012 of 17 December 2012, amended by Law No. 6 of 4 October 2013.

[12] Albanian Institute for International Studies, 2012, *The European perspective of Albania: Perceptions and Realities*.

[13] European Commission, 2013, *Albania 2013 Progress Report, Enlargement Strategy and Main Challenges 2013–2014*, Brussels.

been greatly influenced by Albania's progress in its efforts towards integration in the European Union.

2.1 First competition law of 1995

11. Competition policy in Albania began in 1995 when the first competition law was adopted.[14] Albania was one of the first countries from the Western Balkans to have drafted its own national competition law.[15]

12. Most of the provisions contained in the first law remained only on paper and determined the need to adopt an entirely new law that would ensure the establishment of an independent competition authority and better protection of free and effective competition in the country.[16]

2.2 Second competition law of 2003

13. The new law, the Competition Act, was approved in 2003 with the main objectives of protecting free and effective competition in the marketplace and defining the rules of conduct for undertakings, as well as for the institutions responsible for the protection of competition.[17] A crucial step forward was the establishment of an independent national competition authority empowered to fully enforce the law.[18]

14. The Act was designed to provide protection of the public interest against any distortions of market competition. As such, the rules on unfair competition have been left to be dealt with under the Albanian Civil Code. The Act is applicable to all sectors of the Albanian economy without excluding or exempting any markets or types of economic activity from its scope of application.

2.3 Reform of competition law in 2010

15. The Act was amended in 2010 to achieve further approximation with European Union legislation and improve its implementation.[19]

III. Albanian Competition Authority

16. Competition policy in Albania is implemented by the Albanian Competition Authority, which is also responsible for the enforcement of Community acquis in the process of Albania's integration in the European Union.

---

[14] Law No. 8044 of 7 December 1995.

[15] MA Dutz and M Vagliasindi, 2002, Competition policy implementation in transition economies: an empirical assessment. European Bank for Reconstruction and Development, London.

[16] European Commission, 2003, *Albania Stabilization and Association Report 2003*, Brussels.

[17] Law No. 9121 of 28 July 2003, Fletorja Zyrtare No. 71 (2003), pp. 3189–3211.

[18] P Broka and A Laci, 2010, *Development of Competition Law and Policy and its Implementation as a Challenge for the European Union Integration*.

[19] P Broka and E Nazifi, 2011, Novelties in Albanian competition law, Risitë në të drejtën shqiptare të konkurrencës, *Revista Studime Juridike*; S Gruda B Bushati and A Dibra, 2012, Control of mergers and acquisition: Its impact on the market development in Albania, *Journal of US-China Public Administration*, vol. 9, No. 3.

3.1 Legal status and competence

17. The Albanian Competition Authority is an independent public legal entity located in Tirana.

3.2 Composition and structure

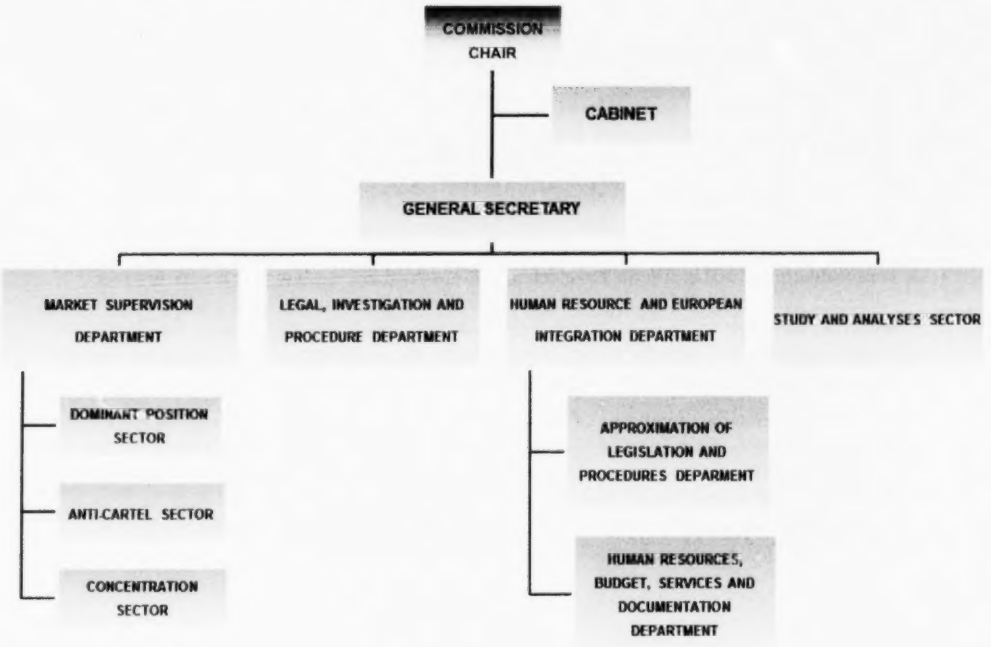
18. The Authority is composed of a decision-making body, the Competition Commission, and an investigative body, the Secretariat. The two bodies are functionally separated within the organizational structure of the Authority (figure 1).[20]

19. The Commission is a permanent collegial body of five members that exercises the decision-making powers of the Authority.[21] Members are elected by the Parliament for a five-year fixed term, with the possibility of re-election, but not more than for two consecutive terms. The criteria for election are provided by the law and are as follows: Albanian citizenship, 15 years' working experience; a doctorate or experience as a university lecturer in law or economics; and no record of disciplinary dismissals. The Commission is headed by a Chair, who manages the Authority's daily work, chairs the meetings of the decision-making college and ensures implementation of the law.

20. The Secretariat, composed of three departments and one sector, is the investigatory body that conducts administrative investigations and studies under the competition law. Its officials are civil servants who work under a Secretary-General elected by the Commission. The main responsibilities of the Secretariat are provided for in the Act, and its organizational structure is approved by the Albanian Parliament (decision No. 96, 30 April 2007).

[20] Law No. 9584 of 17 July 2006.
[21] Law No. 9121, art. 19.

Figure 1
Albanian Competition Authority, 2014



21. Each department is headed by a director who manages the work and ensures the efficient use of human resources. The directors report to the Secretary-General.

22. The Secretary-General is in charge of the daily work of the Secretariat. In his absence, his responsibilities are delegated, by approval of the Chair of the Commission, to one of the departmental directors. The Secretary-General approves all procedural reports made by Secretariat officials.

3.3 Independence

23. The Authority is constituted under the Act as an independent specialized State body, which is financed by the State budget. Its organizational structure is approved and may be amended only by Parliament. The Authority reports on its activities solely to Parliament.

24. Members of the College are elected and dismissed by the Parliament on the basis of criteria and procedures outlined in detail in the Act. They are nominated under a quota system by the President, the Council of Ministers and the Parliament. The mandate principle and rules of incompatibility apply to nominees, who if elected have an opportunity to serve for another term if re-elected.

25. The investigation and resolution of competition cases are internally separated between the Commission and the Secretariat, as this establishes procedural safeguards for

the independent conduct of case studies. Authority staff have civil servant status and are obliged to keep professional secrecy as well as avoid conflicts of interest.[22] This obligation continues even after the termination of their duties.[23]

26. The Authority has adopted a code of ethics, which determines the general ethical standards for its activity in light of its mission as an independent institution protecting market competition.[24]

27. Furthermore, capacity strengthening has been recognized by the Albanian Authority as a tool to enhance the independence of the competition institution.[25]

3.4 Operations

28. In accordance with the Act, the Authority's operations are based on investigation (research) and decision-making in the areas described below (figures 2 and 3).

3.4.1 Antitrust enforcement

29. The Authority enforces antitrust rules, prohibiting entry into horizontal or vertical agreements that have as their object or effect the prevention or distortion of market competition. Moreover, the Authority applies a prohibition of abuse of dominance of undertakings. It has jurisdiction to establish antitrust infringements as well as to impose sanctions or other remedial measures on infringers.

3.4.2 Merger control

30. The Authority exercises ex ante control over all operations between independent undertakings that represent a form of concentration of economic activity and may produce effects on competition in the relevant domestic markets affected by the operations. In this respect, the law provides for a notification regime under which the merging parties are obliged to inform the Authority on the upcoming transaction in advance.

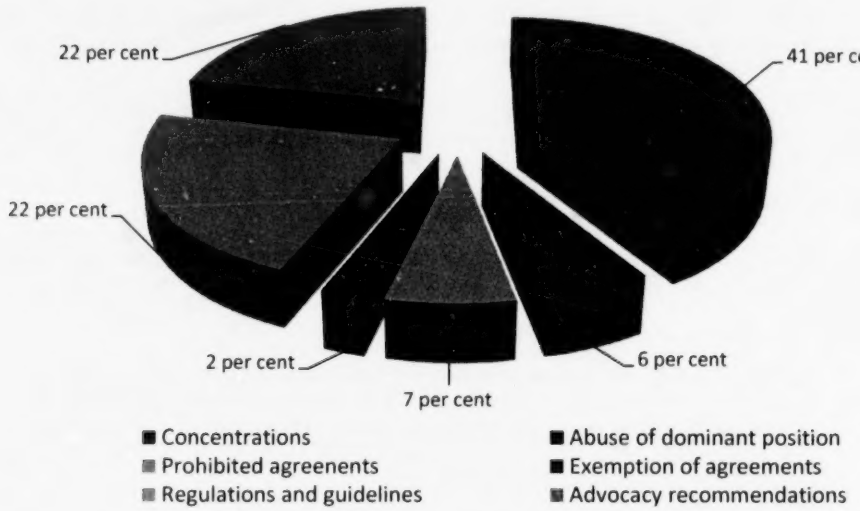
[22] Law No. 9367 of 7 April 2005.

[23] Law No. 9121, art. 30.

[24] Law No. 9131 of 8 September 2003.

[25] Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013; S Gruda and P Melani, 2010, Some challenges of competition authorities of small countries toward European integration: The case of Albania, *Western Balkans Policy Review*, vol. 1, Issue 1.

Figure 2
Decisional practice of the Authority by type of activity, 2004–2013



3.4.3 Sector enquiries

31. The Authority may conduct general enquiries in any sector of the economy, on its own initiative or following a request by the Parliament or other regulators if the rigidity of prices or other circumstances suggest that competition is being restricted or distorted in the market.

3.4.4 Competition advocacy

32. Competition advocacy is one of the main activities of the Authority's operations.[26] Competition impact assessment of legislation is explicitly provided for in the Act.[27] The Authority is also empowered by law to participate in regulatory reforms by issuing appropriate recommendations to the competent policymakers and sector regulators.

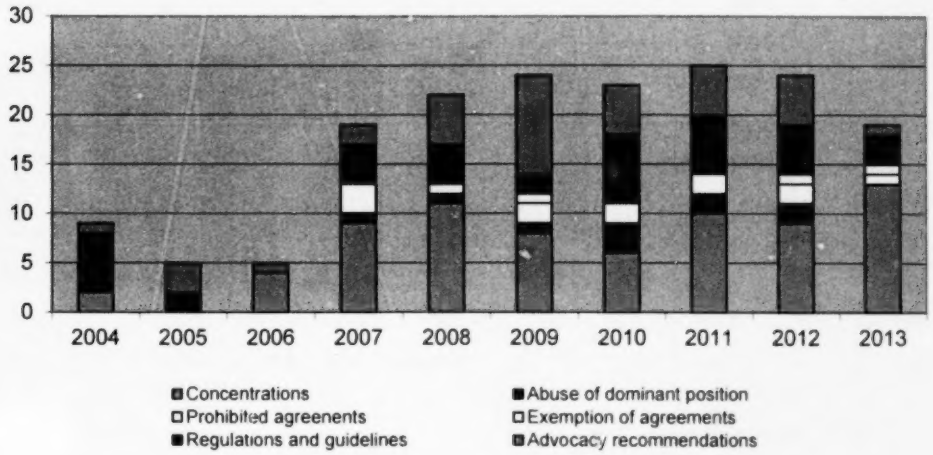
33. The Authority facilitates competition advocacy by concluding memorandums of understanding or maintaining close interinstitutional ties with leading regulatory institutions and non-governmental organizations in Albania.

3.4.5 Approximation of legislation

34. The Authority considers the approximation of national competition law to European rules to be one its top priorities.[28]

[26] Albanian Competition Authority Annual Report for 2012 and Main Goals for 2013.
[27] Law No. 9121, arts. 69 and 70.
[28] See note 26.

Figure 3
Decisional practice of the Authority, 2004–2013

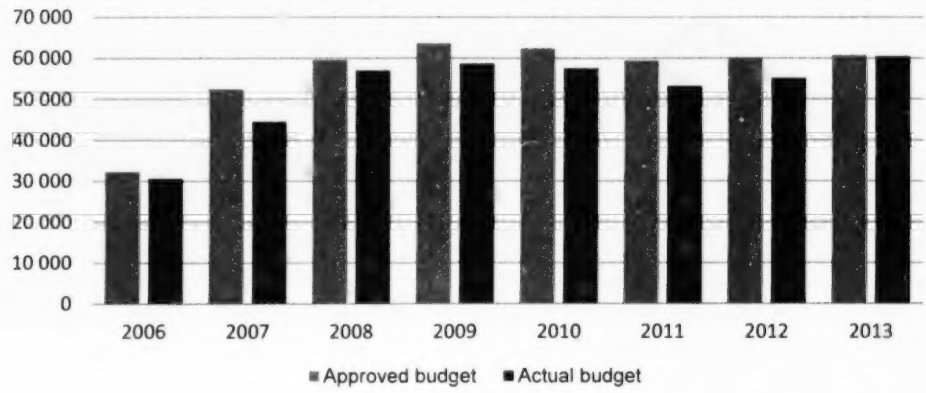


3.5 Administrative resources

3.5.1 Financial resources

35. The Authority's annual budget is approved by the Parliament as a separate article in the State budget law (figure 4).

Figure 4
Annual budget of the Authority, 2006–2013
(Thousands of Albanian lek)



3.5.2 Human resources

36. The total number of staff of the Authority is 36. Twenty-five are expert officials: 13 economists, 9 lawyers, 2 information technology experts and 1 linguist.

3.5.3 Information resources

37. The Authority maintains an official website that provides detailed information in Albanian and English on its activities, competition legislation and Commission decisions. It also contains annual reports, press releases and other publications. The Authority publishes a bulletin of decisions along with annual reports and disseminates publications, brochures and informational booklets. Although the Authority does not have a library within its internal administrative structure, it is constantly improving its information resources, including books and training materials.

IV. Substantive competition law

4.1 Legal sources of Albanian competition law

38. Competition law in Albania is based on the Constitution, which specifies that the economic system of the country is based on private and public property, a market economy and freedom of economic activity. This principle is further developed at a statutory level in the Act.

4.2 General objectives and applicability

39. The general objective of the Act is the protection of free and effective competition in the market by setting behaviour rules for the undertakings.

40. The national competition rules cover all undertakings that operate in the territory of Albania (territoriality principle), as well as undertakings that operate abroad, when their activities could affect competition in domestic markets (effects principle). The law is also applicable to all central and local administration bodies, which must ensure free and effective competition when carrying out tasks related to the regulation of economic activity.

41. The Act provides clear legal definitions with a view to facilitating its applicability.[29]

4.3 Substantive antitrust provisions

42. The substantive antitrust provisions, which the Authority is empowered to enforce, cover collusive agreements between undertakings (art. 4) and abuse of dominant positions (art. 9).

4.3.1 Collusive agreements

43. Similarly to art. 101 (1) of the Treaty on the Functioning of the European Union, the Act contains a general prohibition for all types of agreements having as their object or effect the prevention, restriction or distortion of competition.

44. Albanian competition law outlines a regime of individual and block exemptions for collusive agreements between undertakings. Prior its amendment in 2010, only individual exemptions could be granted. Based on this new power and following European Union initiatives in this field, the Authority granted several block exemptions in research and development, vertical agreements, the motor vehicle industry, insurance, agreements on specialization and technology transfer agreements.

45. Since the 2010 amendments, a de minimis rule has been applied to all agreements that do not significantly restrict competition depending on their aggregate market share: 10 per cent for horizontal agreements and 15 per cent for vertical agreements. The de minimis rule is objectively applicable to all types of agreements, as there are no hard-core restrictions that are explicitly excluded from its scope of application.

46. Prohibited agreements that are not exempt under individual or block exemption regimes and are not covered by the de minimis rule are declared to be null and void by the Act.

47. Competition law in Albania provides a notification regime regarding agreements between undertakings and empowers the Authority to make preliminary compliance assessments. This regime is not applied to agreements that are exempt by virtue of the Authority's block exemption regulations. In this respect, the Authority has issued specific guidelines on the notification of agreements.

48. Competition law does not contain a legal definition of cartels and they are treated in the same manner as other types of prohibited agreements.

4.3.2 Abuse of a dominant position

49. Similarly to art. 102 of the Treaty on the Functioning of the European Union, a general prohibition of abuse of dominance by one or more undertakings in the market is provided for under the Act.

50. A dominant position is defined as a position of economic strength enjoyed by one or more undertakings, enabling the prevention of effective competition in the market by

[29] Law No. 9121, art. 3.

granting the power to behave, with regard to demand or supply, independently of other market participants such as competitors, customers or consumers.[30] The Act acknowledges that several undertakings can enjoy a collective dominant position. In such cases it should be determined whether these undertakings compete effectively with each other and are able to achieve common conduct in the market.[31]

51. According to the Act, any abuse of dominance by one or more undertakings in the market is forbidden. The Act provides a non-exhaustive list of different unilateral practices that may constitute an abuse of dominance. The prohibition covers both exclusionary and exploitative abuses, as these are usually parts of an anticompetitive strategy of dominant undertakings aimed at the exclusion of its competitors and market foreclosure to enable illicit exploitation of its suppliers or customers.

4.4 Substantive provisions on mergers and acquisitions

52. Merger control is one of the main pillars of the Authority's work. It is based on the different types of operations or transactions that are subject to the notification regime under the Act and the assessment methodology that is applied to authorize or prohibit them. According to the law, a concentration of undertakings is deemed to arise where a change of control on a lasting basis results from a merger, acquisition or creation of a concentrative joint venture.[32]

53. The undertakings participating in a concentrative transaction must notify the Authority of the operation in advance so as to receive authorization. The transaction should be notified, provided that the combined total turnover of all participating undertakings worldwide is more than lek 7 billion (about $70 million), and the turnover of at least one of the undertakings amounts to more than lek 200 million (about $2 million) within the internal market of Albania. Alternatively, the merger is notifiable if the aggregate turnover of all the undertakings in the internal market is more than lek 400 million (about $4 million), and the turnover of at least one undertaking within the domestic market is more than lek 200 million (about $2 million).

54. The notification obligation rests with the merging companies (in case of a merger), with the undertaking acquiring control (in case of a takeover) and with the undertakings acquiring joint control (in case of a joint venture).

55. The Authority applies the significant impediment of effective competition test and is empowered to prohibit transactions that significantly impede effective competition in the market or in a part thereof, particularly as a result of the creation or strengthening of a dominant position. In certain cases, the Authority might not forbid a transaction on the basis of considerations of failing firm defence, provided that one of the participating undertakings seriously risks bankruptcy and exiting the market, and there is no other less anticompetitive way to avoid such failure.

---

[30] Ibid.

[31] P Broka, 2010. Abuse of dominant position under competition protection legislation. Abuzimi me pozitën dominuese sipas legjislacionit për mbrojtjen e konkurrencës. *Revista Studime Juridike*, No.2.

[32] Law No. 9121, art. 10.

V. Procedural aspects of Albanian competition policy

5.1 Handling of complaints

56. Based on the Act, the Albanian Competition Authority can act upon complaints, its own initiative (ex officio), leniency applications, merger notifications and requests by State bodies.

57. Complaints are required to be made using a specific form (the model complaint form), which may be submitted to the Authority either electronically or on paper. The Authority takes into consideration all complaints addressed to the institution but processes only those which fall within the scope of the Act. A substantial proportion (about 30 per cent) fall outside the scope of its jurisdiction and are forwarded to the relevant authority or institution.

5.2 General rules of infringement proceedings

58. Infringement proceedings before the Albanian Competition Authority may be instituted on the basis of complaints or ex officio by the Authority's own decision following findings from a sector enquiry or request by the Parliament or another State body.

59. Upon approval by the Commission, the Secretariat may initiate preliminary investigations on its own initiative or following a complaint. The Secretariat initiates a preliminary investigation whenever requested by the Commission, the purpose of which is to establish whether there is sufficient premise for suspicion that antitrust violations have been committed. Provided that there are indications of competition restrictions, an in-depth investigation is initiated following a Commission decision, on the basis of which the Secretariat takes all necessary investigatory steps provided in the Act. The Authority gives notice of the initiation of an in-depth investigation in the Authority's Official Bulletin, which states the purpose of the investigation and parties concerned and invites interested third parties to come forward if they wish to participate.

60. The deadline for a preliminary investigation is not specifically regulated by the Act but, given a general reference to the Code of Administrative Procedures, the duration of a preliminary investigation should not exceed three months. The duration of an in-depth investigation is explicitly provided for in the Act as six months from the opening of proceedings with the possibility of extension by Commission decision, although without explicit specification of the length of extension.

5.3 Investigations of competition cases

61. The investigation of cases is conducted by Secretariat officials on the basis of the Commission's decision to opening a case. The Secretariat conducts investigations in accordance with the Code of Administrative Procedures, competition law and sublaws applicable to the Albanian Competition Authority's infringement proceedings.[33]

62. The investigatory work on cases is performed by working groups of officials established by an order of the Secretary-General, on the basis of a proposal by the Director of the Market Monitoring Department. An official from the Juridical and Integration Department is also included in each group. The Secretary-General appoints the head of the

[33] Law No. 8485 of 12 May 1999.

group. After an investigation has been finalized, the group presents a report to the relevant directors and the Secretary-General by providing a factual, legal and economic analysis, as well as a proposal to the Commission concerning the manner of conclusion.

63. The Secretariat exercises all necessary investigatory powers provided for by the Act to establish the relevant case facts namely, request for information, collection of information from State authorities, on-the-spot inspections of business premises, on-the-spot inspections of non-business premises, seizure of evidence and interviews.

5.4 Procedural status of parties involved in infringement proceedings

64. Parties to the Albanian Competition Authority's infringement proceedings are the complainant who has filed a claim of infringement, the respondent as to whom the infringement is to be established and interested third parties constituted to the proceedings.

65. According to the procedural rules under the Act, the parties under investigation have the right of defence, which is valid throughout the entire procedure but changes scope depending on the procedural stage at which this right is exercised. Albanian law does not provide for a privilege against self-incrimination in infringement proceedings before the Authority, as this is granted only in criminal proceedings.

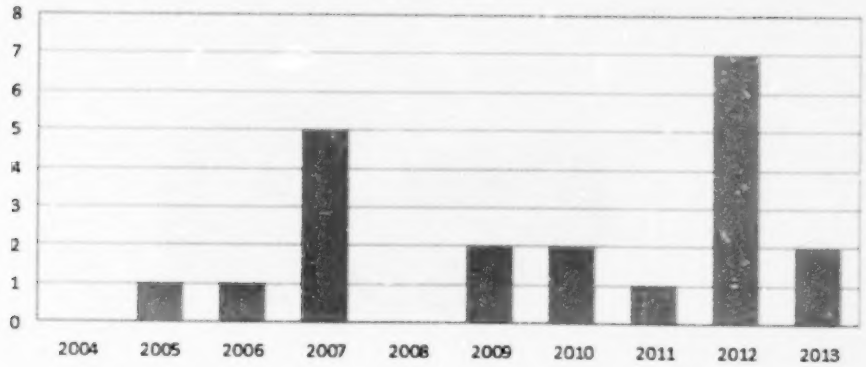
66. Along with their procedural rights, parties to infringement proceedings bear certain obligations to the Authority that are provided for in the Act to facilitate the process of fact finding and guarantee the full and effective enforcement of competition rules. In the event of failure to duly implement these obligations, the Act provides sanctions for the respective parties.

5.5 Decision-making on competition cases

67. Decision-making on competition cases is performed by the Commission, which as a collegial body takes decisions in meetings. Commission meetings are valid when at least four members are present along with the Chairperson or Deputy. The Commission resolves competition cases during regular meetings but, if necessary, the Chairperson may call extraordinary meetings. The Commission may take decisions only on issues that have been included in the agenda, except when the majority of the Commission decides otherwise. Decisions are taken by a simple majority of the members present, as abstention is not permitted, and the Chairperson's vote is decisive. In the event of a lack of consensus, the Commission member voting against the majority justifies the minority opinion, which is published in the Albanian Competition Authority's Official Bulletin alongside the final decision.

68. The procedural decisions of the Commission aim to facilitate or determine the further procedural course of cases, whereas the decisions on substance lead to the resolution of the subject matter of cases. Some of the main decisions on substance are infringement decisions, commitment decisions, decisions on interim measures and decisions on structural or behavioural remedies. Figure 5 shows the number of decisions imposing fines. The total amount of sanctions imposed was over lek 1 billion (over $9 million).

Figure 5
Albanian Competition Authority decisions, 2004–2013



5.6 Specific rules on notification proceedings

69. The Albanian Competition Authority is empowered to open notification proceedings when dealing with either requests for individual exemption from agreements or requests for authorization of transactions that would concentrate economic activity.

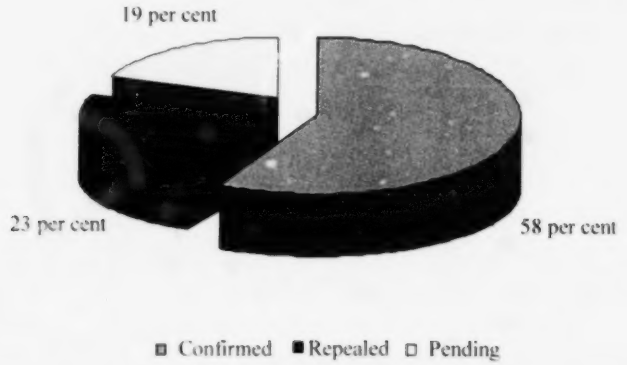
70. The Commission has exclusive authority to decide upon notifications of agreements for granting individual exemptions. A notification submitted to the Authority must contain a detailed description of the scope, content and object of the agreement and the relevant market and market shares of the participant therein, as well as the grounds for granting the individual exemption. Following an assessment, an individual exemption is granted by Commission decision and enters into force from the date of the notification's completion. A temporary exemption may also be granted under certain conditions. It is limited in time but upon request may be extended by the Commission, provided that the requirements of the Act are still met by the parties.

71. However, for concentration notifications, the case first passes through a preliminary assessment, to identify any indicators of significant competition impediments (first phase). The burden of proof that the concentration complies with the appraisal test rests with the notifying party. If the concentration does not show any such indications, the Commission authorizes the concentration within two months from the date of notification. Otherwise, the Commission may authorize the concentration upon conditions or it may open an in-depth assessment. Within three months from the date of initiation of an in-depth assessment, the Commission must decide whether or not to prohibit the concentration (second phase). Prior to taking a decision following an in-depth assessment, the Commission gives the notifying parties, as well as interested third parties related to the notified concentration, the possibility to be heard before the decision-making body.

5.7 Judicial review of decisions by the Authority

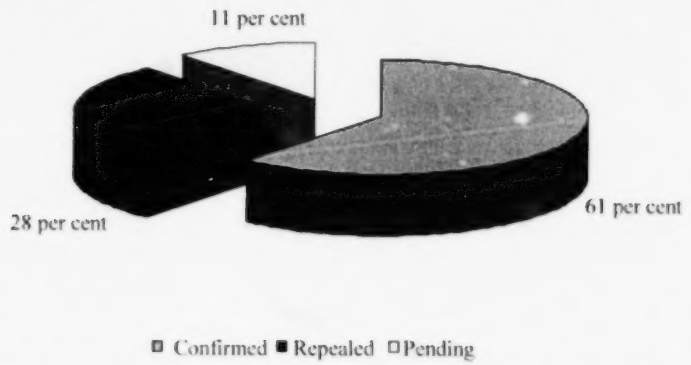
72. According to the Act, the Albanian Competition Authority's decisions are appealable before the District Court in Tirana, which acts as a judicial instance on substance, reviewing both the establishment of the facts and application of the law (figure 6).

Figure 6
Judicial review of Albanian Competition Authority decisions before District Court, 2005–2012



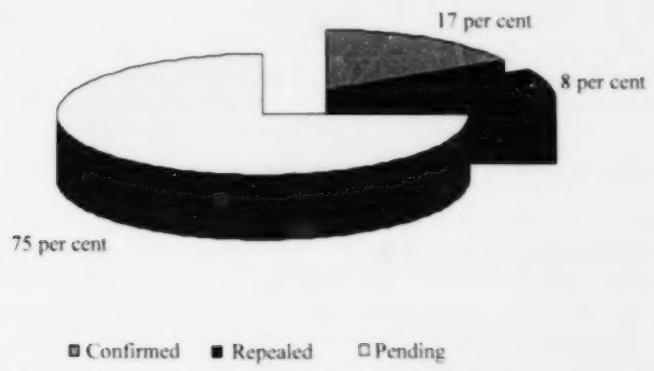
73. The judgements of the District Court are subject to appeal before the Court of Appeal in Tirana (figure 7), whose judgements are subject to final cassation review by the Supreme Court of Albania (figure 8).

Figure 7
Judicial review of Albanian Competition Authority decisions before Court of Appeal, 2005–2012



74. Administrative justice reform has recently been carried out, and affects public competition law enforcement in the country. As a result of the reform, the Review Court, which exercises control over the legality of decisions of the Albanian Competition Authority, has been changed and the District Court has been replaced by the newly established Administrative Court in Tirana, which is tasked to review any decision of the Authority adopted after November 2013.

Figure 8
Judicial review of Albanian Competition Authority decisions before Supreme Court of Albania, 2005–2012



75. Judgements of the Administrative Court are subject to further judicial review by the Administrative Court of Appeal, the only court of its kind in Albania, also based in Tirana. Its judgements and rulings may be appealed before the Supreme Court of Albania, where a special administrative chamber functions as the last cassation instance on administrative cases.

5.8 Civil proceedings on private competition enforcement

76. In addition to public enforcement of competition rules, the Act explicitly provides for the right of any natural or legal person to seek civil protection before the District Court in Tirana of subjective rights affected by competition law infringements by asking for the removal or prevention of the practices restricting competition and reparation or compensation from damages caused by these practices, in accordance with the Civil Code.[34] The action may be undertaken despite the existence of proceedings before the Albanian Competition Authority or prior decisions thereof on the same subject matter.

77. Despite the existing legal framework, there have been no cases of private litigation in Albania to date, mainly due to the lack of public awareness of the possibility for civil protection against competition infringements, the lack of credibility of the judiciary, the length of civil court proceedings and the lack of procedural instruments for private parties to easily obtain evidence for antitrust infringements.

VI. Sanctioning policy

78. The Act provides for sanctions for both substantive competition law infringements and procedural infringements. The Albanian Competition Authority's sanctioning policy has both punitive effects for infringers and deterrent effects towards infringers specifically but applicable to all those subject to competition law in general.

[34] Law No. 9121, art. 65.

6.1 Sanctions for substantive competition law infringements

79. For substantive infringements of competition, the Act provides for sanctions that may be imposed on undertakings or associations of undertakings, as well as individuals.

80. The Commission may impose sanctions on undertakings or associations of undertakings not exceeding 10 per cent of their aggregate annual turnover in the financial year previous to committing a serious infringement as outlined by the law.

81. Individuals may be subject to a fine of not more than lek 5 million (about $50,000) if they intentionally or negligently carry out or cooperate to carry out actions qualified and sanctioned by the Albanian Competition Authority as competition infringements.

6.2 Sanctions for procedural competition law infringements

82. The Commission may impose single procedural fines of up to 1 per cent of the aggregate annual turnover of the undertaking or association of undertakings for a procedural (non-serious) infringement.

83. Periodic penalty payments are intended to compel offenders to fulfil particular obligations, to comply with the decisions of the Albanian Competition Authority to terminate violations or impose measures to restore competition or to facilitate the study itself in the administrative proceedings before the Authority. Therefore, periodic penalty payments of up to 5 per cent of the offender's daily turnover in the previous financial year may be imposed on a daily basis until the termination of the unlawful behaviour.

6.3 Method of setting sanctions

84. The method of setting sanctions is provided for in the Act and the Albanian Competition Authority has also issued a special regulation on fines and leniency from fines, which specifies all criteria to be considered when determining sanctions.

85. Basic sanctions are associated with a percentage of the value of sales, depending on the gravity of the infringement, multiplied by the duration of the infringement.

86. In calculating the fine, the Authority considers the circumstances that may lead to an increase (aggravating circumstances) or a decrease (attenuating circumstances) of the basic amount, as determined by the gravity and duration of the infringement.

87. Fines for substantive competition infringements should not exceed the legal maximum prescribed in the Act, i.e. a specific percentage of the infringer's turnover calculated on an annual or daily basis depending on the type of sanction.

6.4 Leniency policy

88. Since 2004, the Albanian Competition Authority has adopted a leniency policy with a view to facilitating the detection of prohibited agreements between undertakings, but has not yet received any leniency applications under this programme.[35]

89. Immunity from fines is granted only to the first applicant that reveals a prohibited agreement to the Authority. The undertaking should come forward to cooperate with the

[35] Law No. 9121, art. 77

Authority by providing evidence and information not formerly in the possession of the Authority, enabling it to proceed with the launch of investigation proceedings or establishment of a prohibited agreement between undertakings. If the immunity applicant has acted as a leader in the conduct or initiator or instigator in the launch of the prohibited agreement or its continuation, it is explicitly excluded from the possibility of being granted immunity from fines.

90. An undertaking that notifies of participation in a prohibited agreement but does not meet the criteria for immunity from fines may apply for a reduction in fines. The undertaking must give the Authority information that provides added value to the detection of the illegal conduct. In its final decision on the case, the Commission determines the level of leniency for all applicants sequentially; the reduction in fines is 30 to 50 per cent for the first undertaking, 20 to 30 per cent for the second and 20 per cent for any subsequent undertakings.

6.5 Execution of sanctions

91. The sanctions imposed by the decisions of the Albanian Competition Authority become executable in accordance with the Civil Procedure Code after entry into force of the relevant decision. Executions are to be performed by the Judicial Enforcement Service, which is authorized to act on the basis of execution orders issued by the District Court in Tirana. However, most of the fines imposed by the Authority have not yet been collected.

VII. Sector-related competition policy

92. The Albanian Competition Authority has implemented competition policy in some of the main sectors of the Albanian economy by addressing, through its competition enforcement powers or advocacy interventions, different competition-related concerns in these sectors.

7.1 Energy sector

93. The energy market in Albania consists mainly of the electricity market, as there is no centralized heating in the country and the gas supply is still underdeveloped.

94. There is a shortage of electricity generation in Albania and the country imports electricity from abroad. Electricity is generated only by hydropower plants in Albania; the country is overdependent on hydropower and vulnerable to hydrological conditions. Although there is a legal opportunity for the establishment of solar power and wind energy generators, there is no real investment interest in renewable energy sources.

95. With regard to electricity transmission, there is only one power grid operator that acts as a wholesaler of electricity, the State-owned company Albanian Power Corporation, which is a vertically integrated undertaking that operates at both wholesale and generation levels. The lack of unbundling of the two types of operation determines some of the major competition concerns in this market, as well as the low financial liquidity of the entire sector, which has caused significant difficulties at the distribution level.

96. The energy sector regulator exercises ex ante control of the electricity market, including the pricing of electricity supply at both wholesale and retail levels. It is legally obliged to cooperate with the Albanian Competition Authority on the basis of the Energy Act. Additionally, they have concluded a memorandum of understanding allowing them to communicate with each other on any regulatory measure to be undertaken. In this context,

the Authority has issued several recommendations to the energy sector regulator to enhance competition in the electricity market.[36]

7.2 Telecommunications sector

97. Albania has transposed the European Union 2003 regulatory framework and established the Electronic and Postal Communications Authority as an independent sector regulator.[37] The Albanian Competition Authority and Electronic and Postal Communications Authority have closely cooperated under a memorandum of understanding.

98. With regard to the postal market, only the State-owned Albanian Post provides universal postal service in the country.

99. In the market for fixed-voice telephone service, only the incumbent, Albtelecom, operates and due to its significant market power has been subject to ex ante regulation. Fixed telephony has a low penetration rate and this has encouraged consumers to use more mobile telephony, such that Albania now has a high mobile penetration rate. In the mobile telephony market, Vodafone holds the largest market share, followed by Albanian Mobile Communications and Eagle. Mobile number portability was introduced in 2011.[38]

100. The Authority recently conducted a sector enquiry into the landline telephony market and initiated an investigation of the mobile telephony retail market.[39] Analysing the market structure and degree of competition in the market segment of prepaid telephony card services in Albania, the Authority established that several service providers operate in this segment and there are adequate conditions for effective competition.

101. The Authority also initiated an investigation into the mobile telephony retail market.[40] It found that Vodafone held a dominant position and applied different prices for call generation and termination within and outside its network. The analysis showed that such price discrimination may be used as a mechanism for market foreclosure and push smaller operators to exit the market. Nevertheless, the Authority concluded that no abuse was committed as Vodafone publicly engaged itself to equalize prices for calls within and outside its network particularly towards other telecommunications operators active on the market.[41]

7.3 Banking sector

102. The Albanian Competition Authority and the Central Bank of Albania have cooperated under a memorandum of understanding. The Authority has made several recommendations emphasizing the need for increased transparency in the bank loans market to achieve greater consumer protection.

---

[36] Decision No. 159 of 19 November 2010.

[37] Law No. 9918 of 19 May 2008 and Law No. 10132 of 11 May 2009.

[38] Cullen International, 2013, Supply of services in monitoring regulatory and market developments for electronic communications and information society services in enlargement countries 2011–2013, Enlargement countries monitoring report 3.

[39] Decision No. 231 of 5 July 2012.

[40] Decision No. 258 of 21 December 2012.

[41] Decision No. 303 of 16 January 2014.

103. There are 16 licensed commercial banks in Albania, the largest of which holds a market share of about 30 per cent. All commercial banks are members of the Association of Commercial Banks in Albania, although this is not a legal requirement.

104. Furthermore, after some customers expressed concerns, the Authority recently conducted market monitoring on the relations between banks and insurance companies in order to assess their behaviour regarding arrangements for life and collateral insurance of borrowers.[42]

7.4 Insurance sector

105. The Albanian Competition Authority and the Financial Supervisory Agency, which is the sector regulator for the insurance market, cooperate actively on the basis of a memorandum of understanding.

106. There are 11 insurers operating in the Albanian insurance market, nine of which are licensed only for property insurance and two of which operate across both markets for property and life insurance. The biggest player in the property insurance market holds a 30 per cent market share in the market segment of civil liability insurance of motorists.

107. In 2012, the Authority sanctioned eight insurers that had increased the premiums for civil liability insurance of motorists on the same date.[43] In the course of the investigation, parallel and unannounced on-the-spot inspections were conducted and one company was fined for opposing the inspection.[44] Ultimately, the Authority decided that the insurers had acted collusively, with the objective of restricting competition by fixing the premiums of the civil liability insurance of motorists.[45]

108. In addition, the Authority recommended that the Financial Supervisory Agency amend the legal framework of civil liability insurance to reduce the minimum period allowed for changing insurance premiums, to implement a bonus-malus system and avoid joint work among insurers' actuaries in calculating risk premiums.[46]

7.5 Public procurement and concessions

109. The Albanian Competition Authority closely collaborates with the Public Procurement Agency, especially in the prevention and detection of bid rigging in public procurement. Accordingly, the Authority has issued guidelines on countering bid rigging, and has initiated amendments to the Public Procurement Law by introducing a special ban for economic operators on participating in procurement procedures for a period of one to three years, provided that the Authority has found that they have been involved in bid rigging. Moreover, the Authority has proposed an obligation on contracting authorities to inform the Authority of any indications of prohibited agreements during procurement procedures. The Authority has also recommended that the Public Procurement Agency include a certificate of independent bid determination in the standard tender documents and maintain close cooperation with the Authority, including by preparing joint instructions on

[42] Albanian Competition Authority Annual Report for 2013.
[43] Decision No. 222 of 11 April 2012.
[44] Decision No. 216 of 1 March 2012.
[45] Decision No. 246 of 9 October 2012.
[46] Regulation No. 110 of 28 July 2011 and decision No. 247 of 10 September 2012.

combating bid rigging, a guide on detecting and reducing bid rigging and a brochure on the signs of possible bid rigging.[47]

110. In addition, the Authority has dealt with several cases on bid rigging by imposing interim measures and sanctions on bidders.[48]

111. Furthermore, in 2014, the Authority conducted several evaluations on concession agreements, such as the services of certification of technical tests of vehicles, national lottery, fiscal stamps and concession of the seaport of Durres.[49] The Authority assessed the effects of these concessions and issued recommendations with a view to highlighting some public contracts that were problematic in terms of competition.[50]

7.6 Transport sector

112. Albania has made efforts to construct new roads and introduce modern traffic signs, although some roads continue to deteriorate due to inadequate maintenance. All roads are State-owned and managed by the General Roads Directorate, which has been recently transformed into an autonomous agency, the Albanian Roads Authority.[51] The railways in Albania are underdeveloped, with a total length of only 447 km and the single international link providing only freight service. The maritime transport sector in Albania is based on the country's four main seaports, which provide regular ferry services. Currently, there is only one international airport in Albania, from which 15 airlines operate. Airways transport is managed by the Civil Aviation Authority, which has a memorandum of understanding with the Albanian Competition Authority.

113. In the road transport market, the Authority conducted an investigation into the urban passenger transport market in Tirana.[52] Following simultaneous dawn raids, the Authority found that undertakings in the relevant market had agreed to significantly restrict the sales of monthly student tickets.[53] The collusive agreement had taken the form of a decision of the national urban transportation association, which was found to have limited the market independence of urban services providers and thereby affected competition and consumers. The Authority therefore imposed sanctions on all colluders and recommended that the municipality of Tirana conduct a study on the methodology of monthly pass distribution for each operator.[54]

114. In the field of maritime transport, the Authority conducted an enquiry into the market of international maritime shipping of passengers and vehicles in the city of Vlora, but no competition concerns were found.[55]

115. With regard to the air transport sector, the Authority conducted market monitoring to establish the most important competition patterns in the air passenger transport market.[56] In the Authority's opinion, as the airport service market consists of only one operator, Tirana International Airport, and as there are no other competitors, the Civil Aviation

[47] Decision No. 158 of 12 November 2010.
[48] Decision No. 219 of 16 March 2012.
[49] Decision No. 319 of 13 June 2014.
[50] Decision No. 312 of 18 April 2014 and decision No. 337 of 11 November 2014.
[51] European Bank for Reconstruction and Development, 2013.
[52] Decision No. 252 of 26 November 2012.
[53] Decision No. 262 of 14 January 2013.
[54] Albanian Competition Authority Letter No. 349 of 2 October 2013.
[55] Decision No. 218 of 23 February 2012 and decision No. 248 of 11 October 2012.
[56] Albanian Competition Authority Annual Report for 2013.

Authority should exert its influence on the regulation of airport fees by orienting them towards costs, to prevent any price abuses in the market.

7.7 Fuels market

116. Due to the high level of sensitivity of Albanian society to any fluctuations in diesel and petrol prices, the fuels markets have been regularly monitored by the Albanian Competition Authority in recent years.[57] As a result, the Authority has found that the fuel (petrol and diesel) import market is relatively concentrated, but none of the market participants can behave independently from competitors and customers. None of the three major undertakings in the market holds a dominant position, within an oligopolistic market structure.

117. In addition, the Authority conducted investigations into a possible abuse of dominant position by the port operator providing liquefied petroleum gas loading and unloading services in Romano Port, situated near the seaport of Durres. The dominant firm had repeatedly and unjustifiably refused to unload liquefied petroleum gas for some of the operators that had invested in storage capacity. Therefore, the Authority imposed a fine on Romano Port of lek 6.7 million (about $61,500).[58] In the following years, the Authority has continuously monitored the conditions in the liquefied petroleum gas market, with a view to establishing any further distortions of competition resulting from the dominant player's behaviour.[59]

VIII. Findings and recommendations

118. Albania has a modern legal and institutional framework for competition protection, which is constantly aligning with the latest developments in European Union competition law. National law allows for an effective competition policy with respect to all sectors of the economy. Success in this regard depends primarily on the continuous efforts of the Albanian Competition Authority to increase the competition culture of economic operators in the country and to assist national policymakers in refraining from taking any measures that may have adverse effects on competition. The involvement of the Authority in regulatory reforms and the implementation of competition advocacy by providing numerous recommendations to sector regulators undoubtedly have beneficial effects on the functioning of the relevant markets. Fighting cartels is a challenge that requires both improving the national leniency policy and increasing coordination with partner-State authorities with regard to actions against bid rigging in public procurement. In general, improving the administrative capacity and continuous training of the Authority's staff are essential for the effective implementation of national competition policy.

119. Recommendations for issues that need to be addressed or improved are as follows, with the entity addressed in parentheses:

(a) Continue to align the national competition framework with European Union standards in competition policy (Government, Albanian Competition Authority and legislature)

(b) Create institutional capacity for effective State aid control (Government and legislature)

[57] Albanian Competition Authority Annual Report for 2012.
[58] Decision No. 221 of 11 April 2012.
[59] Decision No. 277 of 3 April 2013 and decision No. 289 of 4 July 2013.

(c) Increase the effectiveness of consumer protection (Government and legislature)

(d) Reduce the criteria for election of competition authority members (legislature)

(e) Continue safeguarding the independence of the Albanian Competition Authority (Government, Albanian Competition Authority and legislature)

(f) Consider abolishing the notification regime for agreements between undertakings (Albanian Competition Authority and legislature)

(g) Increase public awareness of anti-cartel policy (Parliament and Albanian Competition Authority)

(h) Enhance the leniency policy in cartel cases (Parliament and Albanian Competition Authority)

(i) Fight against bid rigging by coordinating actions with the relevant authorities for public procurement and anti-corruption policies (Albanian Competition Authority, Public Procurement Agency and anti-corruption authorities)

(j) Continue strengthening tools for competition advocacy (Albanian Competition Authority, legislature and policymakers)

(k) Enhance the competition culture of economic operators in Albania (Albanian Competition Authority)

(l) Introduce detailed rules on commitment decisions (Albanian Competition Authority and legislature)

(m) Increase public awareness of private competition enforcement (Government, judiciary and Albanian Competition Authority)

(n) Strengthen capabilities to conduct on-the-spot inspections in competition cases (Albanian Competition Authority)

(o) Institute the function of Chief Economist to facilitate the use of economic analysis in competition cases (Albanian Competition Authority)

(p) Establish workable systems for the execution of sanctions imposed by the Albanian Competition Authority (Government, judiciary and legislature)

(q) Introduce a precise system for career planning and extra incentives for the staff of the Albanian Competition Authority (Albanian Competition Authority)

(r) Continue to seek technical assistance and training activities for the staff of the Albanian Competition Authority (Albanian Competition Authority)

(s) Provide training activities for judges on competition law (Government, judiciary and Albanian Competition Authority)

(t) Institute a library in the Albanian Competition Authority (Albanian Competition Authority).